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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/593,759    06/14/00    GIVEN    P    2105.2130

005514    IM52/0131  
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EXAMINER

PRATT, H.

ART UNIT

PAPER NUMBER

1761

DATE MAILED:

01/31/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

## Office Action Summary

**Application No.**

09/593,759

**Applicant(s)**

GIVEN ET AL.

**Examiner**

Helen F. Pratt

**Art Unit**

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some \* c) ☐ None of the CERTIFIED copies of the priority documents have been:
1. ☐ received.
2. ☐ received in Application No. (Series Code / Serial Number) \_\_\_\_.
3. ☐ received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

### Attachment(s)

- 14) ☒ Notice of References Cited (PTO-892)
- 15) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 16) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 17) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 18) ☐ Notice of Informal Patent Application (PTO-152)
- 19) ☐ Other: \_\_\_\_\_.

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1, 20, 27, 28 are rejected under 35 U.S.C. 102(a) as being anticipated by Wang.

Wang discloses a composition and method of making containing water and calcium sulfate as in claims 1 and 20. The water is purified because it is boiled. The gypsum of the reference is another term for calcium sulfate. The beverage is used as a health-care beverage, i. e. therefore, it must be administered to a subject as in claim 27. The amount of calcium is seen as a nutritionally significant amount as in claim 28 because the purpose is to add calcium to the diet and there would be no point to add less than a nutritionally significant amount to the diet.

Claims 1, 3, 20, 27, 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Lindon et al.

Lindon discloses a mineralized drinking water formulation containing calcium in amounts <sup>from</sup> 60-135 mg/liter and method of making and using as in claims 1, 20, 27, 28. The calcium can be present in the ionic form as water soluble salt, i. e. a sulfate in within the claimed amount as in claim 3 (abstract).

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 20, 27, 28 are rejected under 35 U.S.C. 102(b) as being anticipated by JRC KK.

JRC KK (JP 04271894A, '189) disclose a composition and process as in claims 1, 20, 27, 28. The water is treated thereby purifying it, then Calcium sulfate is added as the principal component. (abstract). The effective amount as in claim 28 is seen to be shown as the method is the same.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-19, 21-26, 29-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Braun et al. in view of Wang and Couzy.

Braun et al. disclose a composition and method of making a beverage containing calcium sulfate (col. 5, lines 5-20, and col. 15, lines 1-10). Claim 1 differs from the reference in that it is limited to only the claimed ingredients of water and calcium sulfate and the language "consisting essentially of" which means other ingredients which do not materially affect the composition. However, it is not known which ingredients are said to "materially affect the composition". Wang in particular, discloses using only calcium sulfate in a beverage. Couzy et al. disclose that mineral waters containing

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calcium sulfate are well known page 1239, col. 1, first para. It would have been within the skill of the ordinary worker to make a water product like that of Couzy et al. using known purified water. Therefore, it would have been obvious to use only calcium sulfate as shown by Wang in the process of Braun et al. if one only wanted to use one type of calcium compound because it is known for its solubility and would produce a clear composition or to use the teaching of Couzy et al. that calcium sulfate in water is a known bioavailable material, and to use only such when making a composition like Couzy et al. if one wanted only a calcium product.

Claim 2 further requires the use of calcium sulfate dihydrate and claim 3 at least 10% RDV., claims 4, 5, 6 and 7 further require additional vitamins and flavorants. Braun et al. disclose the dihydrate in col. 15, lines 1-10 and the amount in col. 5, lines 25-40., vitamins and flavorants in col. 8, lines 32-44. Therefore, it would have been obvious to use known ingredients to make the claimed product.

Claims 8, 9, 10, 15-16 require a preservative system which can be pasteurization (claim 15) or particular types of pasteurization (claim 16). Braun et al. disclose that preservatives can be used in his composition (col. 14, lines 22-25). Pasteurization is disclosed as in claim 15 and hot filling as in claim 16 (col. 16, lines 12-30). Therefore, it would have been obvious to pasteurize using one of the claimed processes.

Nothing new is seen in adding flavors as in claim 17 or fruit flavors as in claim 18 before preserving. Braun et al. disclose adding juice solids and then pasteurizing (col.

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16, lines 1-30 and orange juice as a flavorant (lines 35-45). Therefore, it would have been obvious to add flavorants such as juices and juice solids before pasteurizing.

Claim 19 requires the use of purified water. Wang discloses boiling water (abstract). Other types of purified water are well known. Therefore, it would have been obvious to use water that has been boiled in the process of Braun et al. for its known function.

Claims 28-30 further require administering the beverage to a subject. As it is known to administer a particular amount to a person, it would have been obvious to administer other amounts depending on the purpose of the composition.

The further limitations have been discussed above and are obvious for those reasons.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 703-308-1978. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brouillette D. Gabrielle, can be reached on (703) 308-0756. The fax phone number for the organization where this application or proceeding is assigned is 703-873-9311.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1193.

  
HELEN PRATT  
PRIMARY EXAMINER  
GROUP 1300-1761